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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1086~~ ~~762~~ ~~759~~ 191

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

THE NATIONAL CAR BRAKE SHOE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 1, 1880.



SUPREME COURT OF THE UNITED STATES.

No. 1086.

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vs.

THE NATIONAL CAR BRAKE SHOE COMPANY.

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1 Pleas in the circuit court of the United States for the northern district of Illinois held at the United States court rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Tuesday, the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

WILLIAM H. BRADLEY, *Clerk.*

THE NATIONAL CAR BRAKE SHOE COMPANY
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company. } In chancery.

NORTHERN DISTRICT OF ILLINOIS, *sct.:*

Be it remembered that on the seventh day of June, A. D. 1880, came the said complainant The National Car Brake Shoe Company, by Messrs. Banning and Banning, its solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, its bond for costs and bill of complaint against the said defendant in said entitled cause,
2 which said bond for costs and bill of complaint are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, May term, A. D. 1880. In equity.

NATIONAL CAR BRAKE SHOE COMPANY
v.
LAKE SHORE AND MICHIGAN SOUTHERN Railroad Company.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it hereby agree and stipulate that execution may issue against my property for any costs taxed against it. Dated this 7th day of June, A. D. 1880.

EPHRAIM BANNING.

(Endorsed:) Filed June 7th, A. D. 1880. Wm. H. Bradley, clerk.

Bill of complaint.

United States circuit court, northern district of Illinois.

To the honorable the judges of the circuit court of the United
3 States for the northern district of Illinois:

The National Car Brake Shoe Company, of the city of Philadelphia, in the State of Pennsylvania, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, brings this its bill of complaint against the Lake Shore and Michigan Southern Railway Company, a corporation created and organized under and by

virtue of the laws of the State of Michigan, and thereupon your orator complains and says:

1. That prior to the 6th day of October, A. D. 1863, James Bing was the original and first inventor and discoverer of a new and useful improvement in car-brake shoes not known or used by others before his invention thereof, and which had not at the time of his application for a patent therefor been in public use or on sale for more than two years with his consent and allowance, as your orator verily believes, and that upon due application letters patent of the United States, No. 40156, in due form were issued to the said James Bing on the said 6th day of October, 1863, granting to him, his heirs, administrators or assigns for the term of seventeen years the full and exclusive right of making, using and vending to others to be used, the said invention as by reference to said letters patent or a certified copy thereof here in court to be produced will more fully appear.

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2. That by virtue of the premises and assignments in writing from and under the said James Bing, which are of record in the Patent-Office at Washington, your orator became and now is the sole and exclusive owner of the entire right, title, and interest in and to said letters-patent No. 40156, and in and to all claims for infringement thereof, and is entitled to sue for and recover all damages occasioned by such infringements, and all gains, profits, savings, and advantages made or received by others by reason thereof.

3. That your orator believes and therefore charges the fact to be that said letters patent No. 40156, are in all respects good and valid in law; and your orator shows that the public generally acknowledge and acquiesce in the validity of said patent, and that it has made many settlements and granted many licenses under said patent.

4. That since the granting of said patent and at divers times and occasions between that time and the filing of this your orator's bill, the Lake Shore and Michigan Southern Railway Company, the defendants herein, well knowing the premises, and in infringement of said patent and in violation of the exclusive rights of your orator thereunder, and without the license of your orator or any one ever interested in the title to said patent, at Chicago, to wit, at the district aforesaid, and at various other places in the United States, has used and still continues to use the said improvements in car-brake shoes, described and claimed in said letters patent No. 40156, and persist in so doing, although warned and notified of their said infringement, whereby great injury has resulted to your orator, and great gains and profits have accrued to said defendant, the full amount of which is unknown to your orator but which in equity belong to it, and should be accounted for by said defendant and paid over to your orator as the avails of its exclusive rights aforesaid, and profits, and gains which it would have derived therefrom but for the unlawful acts of the said defendant.

5

5. To the end therefore that the said defendant may, if it can, show why your orator should not have the relief herein prayed, and may, according to the best and utmost of its knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the allegations in this bill contained (but without oath, its answer under oath being hereby expressly waived) and may be decreed to account for and pay over to your orator all the gains and profits realized by the said defendant and also the damages suffered by your orator from the unlawful making, using, or vending of the inventions and improvements in car brake shoes described and claimed in said patent, and may be restrained and enjoined as well pre-

6

liminarily and provisionally as perpetually from making, using, or vending car brake shoes containing said improvement or any material part thereof; and that your orator may have such other and further relief in the premises as may be agreeable to equity and good conscience and as to your honors shall seem meet:

May it please your honors to grant unto your orator the writ of subpœna issued out of and under the seal of this honorable court directed to the said defendant The Lake Shore and Michigan Southern Railway Company, commanding it by a certain day and under a certain penalty to be and appear in this honorable court and then and there to answer the premises and to stand to and abide by such order and decree as may be made against it, and also the writ of injunction, as well preliminary and provisional as perpetual, issuing out of and under the seal of this honorable court enjoining and restraining the said defend-
7 ant, its officers, servants, agents, attorneys, and workmen, and each and every of them, as is heretofore in that behalf prayed; and your orator will ever pray.

THE NATIONAL CAR BRAKE SHOE COMPANY,
By THOMAS A. BANNING,
Its Attorney.

BANNING AND BANNING,
Solicitors for Complainant.
EPHRAM BANNING,
Of Counsel.

(Endorsed:) Filed June 7, 1880. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 4th day of October, A. D. 1880, said defendant by its solicitor filed in said clerk's office its answer to the bill of complaint in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

United States circuit court, northern district of Illinois. In chancery.

THE NATIONAL CAR BRAKE SHOE COMPANY
v.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.

8 Answer of defendant.

The said defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as defendant is advised is material for it to make answer unto, answering, says:

That it admits that it is a corporation created and organized under the laws of Michigan; and that the patent mentioned in said bill was issued to the said James Bing at the date therein named. But whether the said complainant is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, or whether the said Bing made due application for the said letters patent to him granted, or whether the said complainant ever became or now is the sole and exclusive owner of the entire right, title, and interest in and

to said letters patent, or in and to all claims for infringement thereof, or is entitled to sue for and recover all damages occasioned by such infringement, or all gains, profits, savings, and advantages made
9 or received by others by reason thereof, this defendant is not informed save by the allegations in said bill. This defendant therefore denies each and all of said allegations and calls for proof thereof.

And this defendant denies that the public generally have acknowledged or acquiesced in the validity of said patent; and denies that this defendant is now using, or has ever used in said district or elsewhere the said improvements, or any of them, described and claimed in said letters patent, or has ever infringed upon said patent or upon any of the rights of complainant.

And said defendant says that the thing patented in the said patent of the said Bing, or a substantial and material part thereof claimed as new, had been in public use or on sale, with his consent and allowance, for more than two years prior to his application for said patent, and that said invention had been abandoned by him to the public.

All of which this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

In testimony of all which this defendant has caused this its
10 above answer to be signed by its general superintendent, and its corporate seal to be thereto affixed and attested, this sixth day of July, A. D. 1880.

[SEAL.] CHARLES PAINE,
Gen. Sup't.

Attest:
N. BARTLETT,
Ass. Secretary.
GEORGE PAYSON,
Solicitor for D'f't and of Counsel.

(Endorsed:) Filed October 4, 1880. Wm. H. Bradley, clerk.

And on the same day, to wit, the 4th day of October, A. D. 1880, said complainant, by its solicitors, filed in said clerk's office its replication to the answer of said defendant in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

Circuit court of the United States, northern district of Illinois. In equity.

THE NATIONAL CAR BRAKE SHOE COMPANY
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company.

11 The replication of the National Car Brake Shoe Company, complainant, to the answer of The Lake Shore and Michigan Southern Railway Company, defendant.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said

answer, for replication thereunto says that it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

BANNING AND BANNING,
Solicitors for Complainant.

(Endorsed:) Filed Oct. 4, 1880. Wm. H. Bradley, clerk.

12 Afterwards, to wit, on the 9th day of October, A. D. 1880, the following stipulation was filed in said clerk's office, to wit:

Stipulation.

Circuit court of the United States, northern district of Illinois.

NATIONAL CAR BRAKE SHOE COMPANY
v.
LAKE SHORE AND MICHIGAN SOUTHERN RAILway Company.

Stipulation.

It is hereby stipulated by and between the parties to the above entitled suit for the purposes of said suit and no other, as follows, to wit:

1. That the patent sued on, No. 40156, issued to James Bing October 6, 1863, may be considered as formally offered in evidence, and that complainant is the exclusive owner thereof.

2. That the small brass model offered by complainant and marked "Complainant's Exhibit Bing's Brake Shoe" is a correct representation of the invention described in said patent, except that defendant claims that said model has not enough rocking motion.

3. That the small wooden model offered by defendant and marked Defendant's Exhibit A is also a correct representation of the
13 said invention, except that complainant claims that said model has too much rocking motion.

4. That defendant has used two different kinds of brake-shoes, both of which are claimed by complainant to be infringements of the second claim of said patent, but as to both of which infringement is denied by defendant.

5. That the first of said brake-shoes is constructed in all respects like that described in said patent, except that the two parts, viz, the shoe and the sole, are fitted to each other so snugly as to have no rocking motion.

6. That the second of said shoes is correctly represented by the small wooden model marked Defendant's Exhibit B, and that it also has no rocking motion.

7. That brake-shoes having a detachable sole attached to the shoe by two bolts passing through the shoe and sole at right angles to the face of the sole, one at the top and one at the bottom, and secured by nuts

screwed on to the inner ends of said bolts so that the sole could be taken off upon the removal of both of said bolts, had been known and used in the United States for some years prior to the said invention of said Bing, and that the small wooden model marked "Defendant's Exhibit C" is a correct representation of said brake-shoes.

14 8. That said shoe last mentioned was suspended from the truck by a hanger or clevis attached to a bolt passing through a hole at the top of said shoe, as shown in said model.

9. That neither of said brake shoes used by defendant has the lateral rocking motion described in said patent or infringes the first claim of said patent.

10. That if the court be of the opinion that said lateral rocking motion forms no part of the second claim of said patent, then the first of said defendant's brake-shoes above mentioned is admitted to be an infringement of said claim, and the decision as to that shoe shall be in favor of complainant, provided the court shall also be of the opinion that there is on that construction any patentable novelty in said claim. But if the court be of the opinion that said lateral rocking motion does form a part of said second claim, or that there is no patentable novelty in said claim if so construed as to exclude said rocking motion, then in either of these cases the decision shall be in favor of defendant as to said first shoe.

11. That if the court shall be of the opinion that said lateral rocking motion forms no part of the second claim, and that defendant's second brake-shoe, viz, that like Defendant's Exhibit B, is in its mechan-

15 ical construction substantially the same as the combination described in said claim, then the decision as to that shoe also shall be in favor of complainant, provided the court shall also be of opinion that there is any patentable novelty in said claim when so construed. But if the court shall be of opinion either that said lateral rocking motion does form a part of said second claim, or that the mechanical construction of said second claim is not substantially the same as that shown in said claim, or that there is no patentable novelty in said claim if so construed as to exclude said rocking motion, then in either of said cases the decision as to that shoe shall be in favor of defendant.

12. That in case the court finds the issues in favor of the complainant both parties waive a reference to the master, and agree that complainant's damages may be assessed at the sum of two hundred dollars.

13. That all the evidence in this case is comprised in this stipulation, the models therein referred to, and the said letters patent.

BANNING & BANNING,
Solicitors for Complainant.
GEORGE PAYSON,
Counsel for Defendant.

16 (Endorsed:) Filed October 9, 1880. Wm. H. Bradley, clerk.

The letters patent No. 40156, referred to in paragraph 1 of the preceding stipulation, are as follows:

19 UNITED STATES OF AMERICA.

James Bing, of Philadelphia, Pennsylvania. Improved shoes for car-brakes. Specification forming part of letters patent No. 40156, dated October 6th, 1863.

To all whom it may concern:

Be it known that I, James Bing, of Philadelphia, Pennsylvania, have

invented an improvement in shoes for car-brakes, and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawing and to the letters of reference marked thereon.

My invention relates to the construction of shoes or rubbers for car-wheels, and consists:

Firstly. In constructing the shoe of two parts in the peculiar manner described hereafter, so that the part in contact with the wheel can accommodate itself to the same.

Secondly. In the peculiar combination described hereafter of the two parts of the shoe, the clevis by which the shoe is suspended to the truck, and the bolt which secures the clevis to the shoe, and the two parts of the shoe to each other.

In order to enable others skilled in this class of mechanism to make and apply my invention, I will now proceed to describe its construction and operation.

On reference to the accompanying drawing which forms a part of this specification, Fig. 1 is a vertical section of my improved shoe for railway car-brakes. Fig. 2, a sectional plan on the line 1, 2, Fig. 1; and Fig. 3, a front view of the shoe. Similar letters refer to similar parts throughout the several views.

A is the shoe, and *B* the sole, the latter being formed to fit the periphery of the car-wheel (part of which is shown by the line *x*), and having a lug *a* which fits between the lugs *b b'* on the shoe.

D is a clevis, the upper end of which is suspended to the truck of the railway car, the lower end being arranged to embrace the lugs *b* and *b'* of the shoe, a bolt *G* passing through the lower end of the clevis, through the lugs *b* and *b'* of the shoe, and through the lug *a* of the sole *B*.

It will be observed on reference to Fig. 2, that the lug *a* is made tapering, and that the bolt *G* fits loosely in the said lug, as well as in the lugs *b* and *b'*, so that the sole is self-adjustable laterally for a purpose described hereafter.

A projection *d* on the sole *B* fits into a socket in the shoe in such a manner that the sole can vibrate laterally in the said socket, while the projection serves to maintain the shoe and sole in their proper relative positions.

H is the usual brake beam, one end of which fits into a recess in, and is secured to the shoe *A*, the other end of the beam being secured to a similar shoe on the opposite side of the car truck.

The peripheries of car-wheels are always beveled or inclined so that it becomes necessary to make the soles of the ordinary shoes or rubbers of a corresponding bevel, one shoe at one end of the beam being beveled in one direction, and the other shoe at the opposite end of the beam being beveled in a contrary direction.

Even when the usual shoes are properly fitted to the beveled peripheries of the wheels, the lateral movement of the axles as the wheels traverse curves of the track is such that the ordinary shoes cannot fit accurately at all times. Another evil attending the use of ordinary shoes or rubbers is, that as the lateral movement of the axles takes place an undue strain is imparted to the brake beam.

These difficulties are avoided by my invention, inasmuch as the sole *B* is permitted to have a lateral rocking motion on the shoe, and can at once accommodate itself to the bevel of the wheel or to any variation caused in that bevel, by the lateral movement of the axle.

Another improvement in my invention is the peculiarly simple arrangement of the clevis which supports the shoe, the bolt *G* serving the

purpose of connecting the clevis to the shoe, and the latter to the sole.

20 I claim as my invention and desire to secure by letters patent:

Firstly. The shoe *A* and sole *B*, both being constructed and adapted to each other substantially as described, so that the sole can have a lateral rocking movement on the shoe for the purpose specified.

Secondly. The combination of shoe *A*, sole *B*, clevis *D*, and bolt *G*, the whole being constructed and arranged substantially as specified.

In testimony whereof, I have signed my name to this specification in the presence of two subscribing witnesses.

JAMES BING.

Witnesses:
HENRY HOWSON.
JOHN WHITE.

(Endorsed:) Filed October 9, 1880. Wm. H. Bradley, clerk.

21 Afterwards, to wit, on the 26th day of October, A. D. 1880, there was filed in said clerk's office the following opinion of the court in said entitled cause, to wit:

Opinion of the court.

DRUMMOND, J.:

These two cases depend mainly upon the construction which is to be given to plaintiff's patent of October 6th, 1863. The counsel for the respective parties differ as to this construction. According to the view of the plaintiff's counsel, the patent should receive a liberal or enlarged construction, while the defendant's counsel insists the construction should be more narrow. The original patentee was James Bing. No controversy is made as to the title of the plaintiff to the patent.

The patent is for an improved shoe for car-brakes, constructed in two parts, a model of which has been introduced in evidence. That part which rubs against the periphery of the wheel of the car and produces the retarding motion is called the "sole." The other part is called the "shoe." In considering the invention, we must give effect to the whole of the description contained in the specification and claims.

The patentee starts out with declaring that his invention is:

22 First. The construction of the two parts of the shoe, in the peculiar manner which is described, so that the part in contact with the wheel can accommodate itself to the same. He states that the periphery of a car-wheel is beveled, and that the object of his peculiar construction of the shoe and the sole is that the part which comes in contact with the periphery of the wheel may accommodate itself to the same.

He claims that his invention consists:

Secondly. In a peculiar combination of the two parts of the shoe, the clevis by which the shoe is suspended to the truck, and the bolt which secures the clevis to the shoe, and the two parts of the shoe to each other. Then he describes the shoe by giving in detail the manner in which the parts are constructed, and their relations to each other and to the periphery of the wheel, and the peculiar manner in which the wheels of the car are constructed and beveled.

One of the main things connected with the construction of these two parts is that the shoe has two lugs which pass outside of a lug (*a*) of the sole, and a bolt fastens them together. There is also a lug (*d*) in

the sole, which fits into a sort of mortise or opening in the shoe, so as to enable the oscillating or vibratory motion which he speaks of to take place.

23 After describing the difficulties which exist in fitting the shoe to the periphery of the wheel, he says: "These difficulties are avoided by my invention, inasmuch as the sole B is permitted to have a lateral rocking motion on the shoe, and can at once accommodate itself to the bevel of the wheel, or to any variation caused in that bevel by the lateral movement of the axle." Then he says: "Another improvement in my invention is the peculiarly simple arrangement of the clevis, which supports the shoe, the bolt G serving the purpose of connecting the clevis to the shoe, and the latter to the sole."

It seems as though the patentee, in thus describing his invention, intends two things: In the first place, to describe the construction of the shoe and sole in such a way that the latter is accommodated to the ordinary beveled periphery of the wheel; and secondly, a combination of these various parts, consisting of the shoe and the sole, the clevis by which the shoe is suspended to the truck, and the bolt which secures the clevis to the shoe and the two parts of the shoe to each other, and this intention of the patentee seems to have been expressed in the claims.

There are two claims. The first is "the shoe A and sole B, both being constructed and adapted to each other substantially as described,
24 so that the sole can have a lateral rocking movement on the shoe for the purpose specified." There can be no doubt what was in the mind of the patentee in making the first claim. If we take out the bolt, the rocking motion can be seen in the model by moving the two (the shoe and the sole) one upon the other. But to accomplish that, the bolt is somewhat loose, and one of the lugs of the sole *a* has to be tapered more or less, all of which he describes.

The question is whether there is necessarily found in the second claim, and as an essential part of it, without which it does not exist as a valid claim, and there can be no infringement, the peculiar construction of parts which produce the rocking motion. This claim is: "The combination of shoe A, sole B, clevis D, and bolt G, the whole being constructed and arranged substantially as specified." It will be observed the words are "constructed and arranged," not "adapted," as in the first claim, and the rocking motion is not a part of the claim unless implied by the language used.

I am inclined to think there may be an infringement, and this may be a valid claim, independent of what is set forth in the specifications, as he describes the invention "firstly," and in the first claim, without its possessing the rocking motion; and therefore that the view which the plaintiff's counsel take of the construction of the patent is correct.

25 I have already called attention to the manner in which the inventor divided his invention into two parts: first, so that the sole can accommodate itself to the periphery of the wheel; and, secondly, the peculiar combination of the two parts of the shoe, the clevis by which the shoe is suspended upon the truck, and the bolt which secures the clevis to the shoe, and the two parts to each other; and, also, to that part of the specification in which he says that the difficulties which have heretofore existed are avoided because of the shoe having this lateral rocking motion. He then says his invention, or device, has another improvement, and that consists in what he describes "secondly" as his invention in the first part of his specification—the peculiarly

simple arrangment of the clevis which supports the shoe, the bolt G serving the purpose of connecting the clevis with the shoe, and the latter to the sole.

Whether or not the combination of the second claim contains, as an essential element, this lateral rocking motion, in order to make it a valid claim, and whether it must be found in an infringing machine, is the question. If this rocking motion was all that was in the mind of the inventor, I think it may be asked, with a good deal of significance,
26 what was the necessity of his dividing his invention into two parts, as he did in his specification, and also in the claims. He may have had in his mind that the device which he was describing was constructed in the way which he has specified; but still he claims a combination, which he describes in his second claim, and I think it may be a valid combination, independent of the lateral rocking motion, which he speaks of in the first claim, and in various parts of the specification. If it is not so, then all that would be necessary to prevent infringement would be to change slightly the form of the lug (*a*) of the sole, or to tighten the bolt G.

I do not understand that in the various patents that have been put in evidence, there is anything which successfully attacks the device invented by the patentee, and which would prevent it from taking effect as the subject of a valid patent. It is true, before this invention, there were devices by which the two parts of the shoe were separated when that which was applied to the periphery of the wheel was worn out, or so worn that it could not be successfully used; but, after all, that is not the invention of the patentee in this case. His invention is the peculiar construction of the shoe in these two parts, put together and separated in the way described. And while it may be the duty
27 of the court to limit the patentee strictly to the claims which he has set forth, still it is, also, the duty of the court to give effect to the invention of the patentee, provided the court can see that he has described and claimed it, and so I think the second claim may be infringed, although there may not be in an infringing machine the lateral rocking motion described in the first claim.

With this construction of the patent, it seems to me there cannot be much doubt but that the devices of the defendants, in both cases, infringe the plaintiffs patent. The variations are not substantial, but are more in form than in substance. So that, on the whole, I find that the plaintiff is entitled to a decree in each case.

On the same day, to wit, the 26th day of October A. D. 1880, in the record of the proceedings of said court in said entitled cause, before the honorable Thomas Drummond, judge, is the following entry, to wit:

THE NATIONAL CAR-BRAKE SHOE COMPANY
vs.
THE LAKE SHORE AND MICHIGAN SOUTHERN Railway Company. } In equity.

This cause came on to be heard at this term and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered,
28 adjudged, and decreed as follows, viz:

1. That letters patent of the United States, No. 40156, issued on the sixth day of October, A. D. 1863, to James Bing for an improvement in shoes for car-brakes, being the letters patent referred to in the bill of complaint herein, are in all respects good and valid in law, so far as re-

gards the second claim thereof, and that the complainant is the exclusive owner thereof, as alleged in said bill.

2. That the Lake Shore and Michigan Southern Railway Company, the defendant herein, has infringed upon the said letters patent, and upon the exclusive rights of the complainant under the same, by using the invention therein described, and secured by the second claim thereof, as alleged in said bill.

3. It appearing to the court that said parties have agreed to waive a reference to a master, and have stipulated that complainant's damages may be assessed at two hundred dollars, it is further ordered, adjudged, and decreed that the complainant recover of the defendant the said sum of two hundred dollars ($200), and that it have execution therefor, the same to be in full satisfaction of all claims of the complainant against the defendant on account of the defendant's infringement of said
29 patent as aforesaid.

And by agreement of the parties and order of the court this decree is entered now as of the ninth of October instant, and thereupon the defendant prayed an appeal to the Supreme Court of the United States, which is allowed upon the defendant's filing bond in the sum of three hundred dollars, to be approved by the court.

And on the same day, to wit, the 26th day of October, A. D. 1880, said defendant by its solicitor filed in said clerk's office its appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Circuit court of the United States, northern district of Illinois. In chancery.

NATIONAL CAR-BRAKE SHOE COMPANY
v.
LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

Know all men by these presents that I, George Payson, of the city of Chicago, county of Cook, and State of Illinois, am held and firmly bound unto the National Car-Brake Shoe Company in the penal sum of three hundred dollars ($300) to be paid to the said National Car-
30 Brake Shoe Company, its successors and legal representatives, to which payment well and truly to be made, the said George Payson binds himself, his heirs, executors, and administrators by these presents. In witness whereof the said George Payson has hereunto set his hand and seal this 26th day of October, A. D. 1880.

The condition of this obligation is such that whereas the above Lake Shore and Michigan Southern Railway Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered against it by the name and style of the Lake Shore and Michigan Southern Railway Company in the above entitled cause by the circuit court of the United States for the northern district of Illinois, the 26th day of October, A. D. 1880, as of the ninth day of October, 1880:

Now therefore the condition of this obligation is such, that if the above named the Lake Shore and Michigan Southern Railway Company shall prosecute its said appeal to effect and without delay, and answer all